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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LORELEI A. ENCARNACION, Plaintiff and Respondent, v. ALI SEATON, Defendant and Appellant.	D054002 (Super. Ct. No. DVS08756)

APPEAL from an order of the Superior Court of San Diego County, Susan P. Finlay, Judge. Affirmed.

The superior court issued a domestic violence protective order, restraining Ali Seaton from having contact with his former girlfriend, Lorelei Encarnacion, and her children. (Fam. Code, § 6200.) Seaton appeals. We affirm.

FACTUAL SUMMARY

The court held a hearing on Encarnacion's request for a protective order, but Seaton did not designate a reporter's transcript to be included as part of the appellate

record. Thus, our factual summary is necessarily limited to the information in the clerk's transcript.

The only factual information in the clerk's transcript is the following: Encarnacion filed a petition for a domestic violence protective order against Seaton, who Encarnacion described as her "ex-boyfriend." After a hearing, the court granted the petition and issued an order prohibiting Seaton from contacting, harassing, or taking numerous other specific actions against Encarnacion and her children. (Fam. Code, § 6200.)

Additionally, on our own motion, we have reviewed the superior court file. The file contains Encarnacion's petition for the protective order, in which Encarnacion stated: "I fear for my safety and the safety of my children." Encarnacion said that Seaton refused to "vacate my property" and "constantly make[s] annoying phone calls towards me" and sends unwanted e-mails. Encarnacion stated that Seaton has a "criminal and domestic violence record" and is currently on probation.

DISCUSSION

On appeal, Seaton contends "[t]here is no substantial evidence or proof" to support the protective order. He claims he did not "harass, threaten, [or] abuse" Encarnacion, and that he did not commit any crime against her.

I. *Review Standards*

It is a fundamental tenet of appellate law that the lower court's judgment is presumed to be correct. As the party seeking reversal, it is the appellant's burden to provide an adequate record to overcome the presumption of correctness and show

prejudicial error. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132.)

To overcome this presumption of correctness, Seaton must show legal error on the face of the appellate record, which consists of the clerk's transcript containing four documents: the notice of appeal, a proof of service, the notice designating the record, and the protective order.[1] As noted above, we have also reviewed Encarnacion's petition for the protective order contained in the superior court file.

We must make all reasonable inferences favoring the court's order, and must affirm the judgment if any possible grounds exist for the trial court to have reached its factual conclusions. (See *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447-448.) Any ambiguity in the record is resolved in favor of the judgment. (*Ibid*.)

II. *Domestic Violence Prevention Act*

The court issued the protective order under the Domestic Violence Prevention Act (Act), which permits a court to issue an order restraining a person "if an affidavit . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (Fam. Code, § 6300.) The Act applies to abuse perpetrated by certain persons, including a former cohabitant or a person with whom the moving party had a dating

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1 Seaton also designated "Exhibit A," which apparently contains phone records and a copy of an e-mail introduced at the protective order hearing. This exhibit was never lodged in this court.

relationship. (Fam. Code, § 6211, subd. (c).) The Act broadly defines "abuse" to include physical abuse, threatened physical abuse, and numerous forms of harassment. (Fam. Code, §§ 6203, 6320.) The statutory definition of "abuse" also includes nonviolent conduct, such as unwanted telephone or e-mail communications or improperly accessing an e-mail account. (See Fam. Code, §§ 6203, 6320; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498-1499; *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1299.) The type of conduct that can support a protective order is "much broader than that which is defined as civil harassment" under the civil harassment statute (Code Civ. Proc., § 527.6, subd. (b)), and the proof standard is preponderance of the evidence, rather than clear and convincing evidence applicable in the civil harassment statute (Code Civ. Proc., § 527.6, subd. (d)). (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334.)

III. *Analysis*

Seaton contends there was insufficient evidence to show he engaged in any abusive conduct warranting a protective order. However, without a reporter's transcript, we must presume the facts supported the court's findings. An appellant who attacks a judgment, but supplies no reporter's transcript, is precluded from asserting that the evidence was insufficient to support the judgment. (*City of Chino v. Jackson* (2002) 97 Cal.App.4th 377, 385.) In the absence of a reporter's transcript, we cannot evaluate issues requiring a factual analysis and must presume "the trial court acted duly and regularly and received substantial evidence to support its findings." (*Stevens v. Stevens* (1954) 129 Cal.App.2d 19, 20; see *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003; *Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657.)

There is no evidence in the record supporting Seaton's claim that he did not commit abuse against Encarnacion. Moreover, even if Seaton's wrongful conduct was primarily in the form of unwanted, harassing and annoying phone calls and e-mails, this type of conduct can constitute abuse under the Act. (See Fam. Code, § 6320; *In re Marriage of Nadkarni, supra,* 173 Cal.App.4th at pp. 1498-1499; *Ritchie v. Konrad, supra,* 115 Cal.App.4th at p. 1299.)

Seaton also claims the order was improper because Encarnacion "illegally shut off the water" to his home. There are no facts in the appellate record to support this argument. And even assuming Encarnacion did engage in this act, this conduct does not mean the protective order was not warranted. The purpose of the Act is to protect the moving party and provide a period of separation between parties in a former domestic relationship. (Fam. Code, § 6220.) The court was not required to conclude that Encarnacion's actions, even if improper, precluded her as a matter of law from establishing she was entitled to protection under the Act.

A court has broad discretion to issue a protective order under the Act. (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 420.) A reviewing court must affirm unless "'the trial court exceeded the bounds of reason.'" (*Ibid*.) "'When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute

its decision for that of the trial court.'" (*Ibid*.) On this record, there is no support for Seaton's argument that the court abused its discretion in this case.[2]

DISPOSITION

Order affirmed.

HALLER, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.

[2] There was no respondent's brief filed in this case. However, an appellant has the burden of showing reversible error even in the absence of a respondent's brief. (See *County of Lake v. Antoni* (1993) 18 Cal.App.4th 1102, 1104; Cal. Rules of Court, rule 8.220(a)(2).)